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JUL 22 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

RIVERTOWN COMMUNICATIONS, INC.
Eldon, Iowa

For Construction Permit

File No. BPH-911008ME

FM EXAMINERS

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REPLY TO "PARTIAL OPPOSITION TO PETITION FOR LEAVE TO AMEND"

Rivertown Communications Company, Inc., ("Rivertown"), by
its attorney, hereby responds to the July 10 "Partial Opposition"

cut-off date "will not be attributed to the applicant for diversification purposes if it files a contemporaneous pledge to divest that interest if its application is granted," and then impermissibly extrapolates from that the claim that if Rivertown's amendment "is found to be late-filed, [it] would necessitate a diversification demerit against Rivertown."¹

The simple facts are that Mr. Brown's employment by the Galesburg stations commenced on May 26, 1992 (under an Agreement entered into on May 8). That Agreement (a redacted copy of which is attached hereto) specifically acknowledges the pendency of the Rivertown application, and grants Brown the option to terminate his employment on ninety days notice, if the Eldon application is granted.

Mr. Brown executed Rivertown's amendment on June 30, and mailed it to the undersigned counsel, who received it on July 6

¹ The underlying premise of Sample's argument is that Mr. Brown's employment by a broadcast station in another market constitutes an "interest" in mass media to be considered comparatively under the diversification factor. While we recognize that the 1965 Comparative Hearing Policy Statement, 1 FCC 2d 393, stated (at note 5, emphasis added) that "[l]ess than controlling interests and significant managerial positions in stations and other media . . . will be considered when held by persons with any ownership or significant managerial interest in an applicant," it failed to offer any rationale for equating a non-owner manager with an equity owner for diversification purposes. Moreover, the quoted language was preceded by reference to rules barring common ownership, operation, or control of stations in the same service serving substantially the same area -- rules designed to ensure competition, rather than to promote diversity of media ownership.

Thus, Rivertown questions the logic of attributing, for comparative diversification purposes, non-equity management of a station whose service area does not overlap that of the proposed station.

(there was no mail service on July 3 or 4, due to the Fourth of July holiday), and filed it with the Petition the following day. The amendment reported both Mr. Brown's new employment, and his commitment to terminate that employment in order to fulfill his fulltime integration plans with respect to Rivertown's station if its application is granted.

While Rivertown's amendment was not filed precisely within thirty days of the commencement of Brown's new employment, the amendment was executed only five days beyond that period, and filed just seven days later. Moreover, given that Mr. Brown's Galesburg employment contract specifically recognized the pendency of Rivertown's application, and accorded him the option of terminating his employment on ninety days notice in the event of a grant of that application, there is no basis to suggest that his commitment to terminate that employment following grant of Rivertown's application was other than "contemporaneous," as Sample suggests.

the Board ruled that a post-"B" cut-off acquisition (a subscription to stock of a CATV company entered into on March 14) would not be counted for diversification purposes, a divestment commitment dated April 7 being deemed a "contemporaneous pledge to divest."² See, also, Angeles Broadcasting Network, 61 RR 2d 480 (Rev. Bd. 1986).

Sample's preoccupation with minutia is further manifested by its charge that Rivertown has demonstrated "a continuing lack of concern for the Commission's rules," based upon the fact that Rivertown's earlier amendment reporting that Mr. Brown ceased to be employed by Station KKMI-FM, Burlington, Iowa, on March 13, 1992, was not filed until May 11, 1992. However, as that amendment pointed out, Mr. Brown had committed himself to resign that position if Rivertown's application were granted in any event. In view of that commitment, the materiality to this proceeding of when that employment ceased is not apparent.

Sample concludes with the claim that

"The public and all parties to this proceeding are prejudiced by Rivertown's apparent refusal to be promptly forthcoming with requisite details of Mr. Brown's employment and its repeated disregard for the Commission's amendment requirements."

² The Board's observation in Santee-Cooper (at note 67) is equally valid here:

"[C]harging the WBC principal with the fictional CATV interest would be akin here to hitting them on the head with a lead pipe, the temporal circumstances considered. . . . ' . . . when the Commission applies its procedural rules strictly, it must be mindful of the underlying purposes of those rules to ensure that rigidity does not override those purposes. justice. or equity.' Washington's Christian

This claim is totally unsupported. The only apparent prejudice to either of the parties has been the unnecessary legal fees to both applicants, resulting from Sample's excessive lawyering.

Accordingly, Rivertown urges that its July 7 petition be granted and the amendment tendered therewith be accepted

EMPLOYMENT AGREEMENT

AGREEMENT, entered into this 9th day of May, 1992 by and between Radio Communications Group, Ltd., an Illinois Limited Partnership (Employer), and David W. Brown (Employee).

1. Employer agrees to employ employee as General Manager of WAIK-AM and WCBQ-FM, Galesburg, Illinois for an initial term of one year commencing May May 26, 1992.
2. Parties acknowledge that a corporation largely owned and controlled by Employee has an application pending before the FCC for a new FM radio station to be licensed to Eldon, Iowa. In the event that the application is granted, Employee may, at his option, terminate his employment hereunder by giving not less than ninety days notice to employer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as
of the day and year first above written.

RADIO COMMUNICATIONS GROUP, LTD.

By: 
Albert O. Berglund, Jr.
General Partner

DAVID W. BROWN

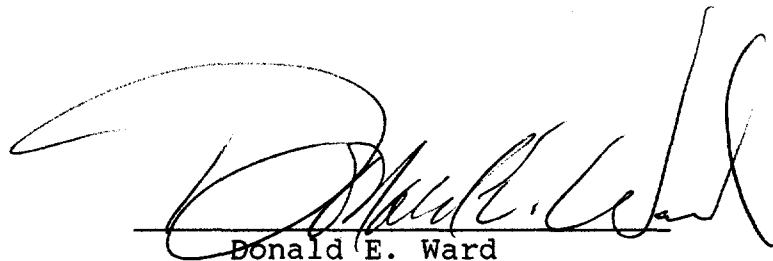


CERTIFICATE OF SERVICE

I, Donald E. Ward, do hereby certify that I have this 22nd day of July, 1992, caused to be served by first class United States Mail, postage prepaid, a copy of the foregoing "REPLY TO 'PARTIAL OPPOSITION TO PETITION FOR LEAVE TO AMEND'" to the following:

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